

FOREWORD: THE PROMISE AND LIMITS OF STATE CONSTITUTIONS

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Nearly fifty years ago, Justice William J. Brennan wrote a now-famous article on state constitutions as a source of individual rights.¹ Channeling his roots as a justice on the New Jersey Supreme Court, Justice Brennan urged state judges to “step into the breach” as “guardians of our liberties,”² reminding us all of a piece of democratic wisdom that is perpetually true but periodically forgotten: “State constitutions, too, are a font of individual liberties.”³

Justice Brennan’s article was written against the backdrop of the newly ascendent Burger Court’s rollback of Warren-era precedents. Today, we are witnessing an even more significant moment of rights retrenchment in the federal courts.⁴ From curtailing voting rights to abolishing the federal right to abortion and impeding government’s ability to tackle gun violence, the Supreme Court is an increasingly hostile venue for many forms of civil rights litigation.⁵

In this new constitutional moment, state courts and constitutions have attracted unprecedented levels of attention from advocates, scholars, and members of the public. Yet, state constitutions are understudied, and their potential remains untapped by advocates and judges alike. To both better understand the role of state courts and constitutions in our legal system and democracy and spur greater engagement, the Brennan Center, a new Brennan Center publication *State Court Report*,

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¹ William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

² *Id.* at 491, 503.

³ *Id.* at 491.

⁴ See Hon. Catherine R. Connors & Connor Finch, *Primacy in Theory and Application: Lessons from a Half-Century of New Judicial Federalism*, 75 ME. L. REV. 1, 9 (2023).

⁵ See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 232 (2022); *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 11 (2022); *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019) (finding that partisan gerrymandering is a nonjusticiable political question despite its infringement on the right of the people to select their representatives); *Shelby County v. Holder*, 570 U.S. 529 (2013). For a discussion of the Court’s recent unfriendliness to civil rights lawsuits, see generally MICHAEL WALDMAN, *THE SUPERMAJORITY: HOW THE SUPREME COURT DIVIDED AMERICA* (2023); Erwin Chemerinsky, *The Supreme Court and Racial Progress*, 100 N.C. L. REV. 833, 844–54 (2022).

and the NYU Law Review held a two-day symposium in February 2024 titled, “The Promise and Limits of State Constitutions,” which led to this collection of essays.

The conversations looked both forward and backward. The 1970s and 80s saw an initial era of “New Judicial Federalism,” where a number of state courts embraced for the first time broader rights under state constitutions than those provided by the federal constitution.⁶ For example, after the Supreme Court closed the door to federal constitutional claims challenging educational inequity, several state courts held that there were affirmative and judicially enforceable state constitutional rights to public education.⁷

Fast-forward a few decades to the present, and while the issues are often different, the hydraulics are frequently the same. In the weeks leading up to the symposium, for instance, the Massachusetts Supreme Judicial Court applied its Eighth Amendment analogue to bar life in prison without parole for people under twenty-one—a first in the nation precedent⁸—while the Pennsylvania Supreme Court issued a landmark decision that the state’s Equal Rights Amendment applies to state classifications that burden one sex, including those pertaining to abortion regulations.⁹ Lest we think that state constitutional litigation is inherently progressive, however, in the weeks that followed the symposium the Alabama Supreme Court attracted national headlines with a ruling applying its wrongful death statute to frozen embryos, in part relying on a state constitutional amendment that protects “the rights of the unborn child.”¹⁰

Indeed, while in some ways we are experiencing a kind of *déjà vu* with respect to the early days of judicial federalism, much is different about our current situation, as Professor Helen Hershkoff noted in her

⁶ See generally Robert F. Williams, *Robert F. Williams State Constitutional Law Lecture: The State of State Constitutional Law, The New Judicial Federalism and Beyond*, 72 *RUTGERS U. L. REV.* 949 (2020).

⁷ See JEFFREY S. SUTTON, 51 *IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW* 22–41 (2018); Michael A. Rebell, *State Courts and Education Finance: Past, Present and Future*, 2021 *BYU EDUC. & L.J.* 113, 113–14 (2021).

⁸ See Alicia Bannon, *Massachusetts Breaks New Ground in Limiting Youth Punishments*, *STATE CT. REP.* (Jan. 22, 2024), <https://statecourtreport.org/our-work/analysis-opinion/massachusetts-breaks-new-ground-limiting-youth-punishments> [<https://perma.cc/TJTS-A62E>].

⁹ See David S. Cohen, *Pennsylvania Supreme Court Ruling Overturns Decades-Old Precedent in Abortion Ruling*, *STATE CT. REP.* (Feb. 14, 2024), <https://statecourtreport.org/our-work/analysis-opinion/pennsylvania-supreme-court-ruling-overturns-decades-old-precedent> [<https://perma.cc/3S3X-DTFL>].

¹⁰ See Alicia Bannon, *Alabama IVF Ruling Puts Spotlight on Fetal Personhood Rights*, *STATE CT. REP.* (Feb. 29, 2024), <https://statecourtreport.org/our-work/analysis-opinion/alabama-ivf-ruling-puts-spotlight-fetal-personhood-rights> [<https://perma.cc/E58G-L4UV>].

introductory remarks.¹¹ Political polarization has come to dominate judicial politics—local, state, and national.¹² State supreme court elections, once sleepy affairs, increasingly feature astronomical levels of spending.¹³ The successes and failures of state constitutional ballot referenda and decisions by state courts on a variety of matters, including abortion, bail, climate change, direct democracy, and gerrymandering, have captured national attention.¹⁴ Meanwhile, state legislatures have doubled down on efforts to politically capture state courts to prevent them from being an obstacle to policy goals.¹⁵

We have also had nearly fifty years to assess and reckon with the aftermath of Justice Brennan's article. With tremendous credit and gratitude to those who have spent decades toiling tirelessly (and thanklessly) in the trenches of underfunded state courts to expand access to public education, promote justice in our criminal system, redress poverty, and much more, state courts' record as a source of robust rights protection is decidedly mixed.¹⁶ We have seen major reforms in areas like public education resulting directly from state constitutional rulings, for example, but in many states, remedies have

¹¹ Helen Hershkoff, *Introductory Remarks: The Promise and Limits of State Constitutions*, 99 N.Y.U. L. REV. 1895 (2024).

¹² See generally James A. Gardner, *New Challenges to Judicial Federalism*, 112 KY. L.J. 703 (2024); Richard L. Hasen, *Polarization and the Judiciary*, 22 ANN. REV. POL. SCI. 261 (2019).

¹³ See DOUGLAS KEITH, *THE POLITICS OF JUDICIAL ELECTIONS, 2021–2022* (2024), <https://www.brennancenter.org/our-work/research-reports/politics-judicial-elections-2021-2022> [<https://perma.cc/H4UQ-BWRV>].

¹⁴ See, e.g., Kris Maher & Jon Kamp, *Ohio Voters Enshrine Abortion Access in State Constitution*, WALL ST. J. (Nov. 8, 2023, 12:32 AM), <https://www.wsj.com/politics/elections/election-day-ballots-ohio-abortion-maine-texas-colorado-d9922480> [<https://perma.cc/F5QZ-4HFK>] (describing use of state ballot initiative in Ohio to enshrine abortion access); Harm Venhuizen, *Wisconsin Voters Pass Amendment for Stricter Cash Bail*, ASSOCIATED PRESS (Apr. 4, 2023, 10:05 PM), <https://apnews.com/article/wisconsin-election-cash-bail-amendment-024fafaacafb30c929dbd6bddfbed1bf> [<https://perma.cc/X7P6-972T>] (documenting successful state ballot initiative to make cash bail stricter); Nathan Rott & Seyma Bayram, *Montana Youth Climate Ruling Could Set Precedent for Future Climate Litigation*, NPR (Aug. 23, 2023, 6:00 AM), <https://www.npr.org/2023/08/23/1194710955/montana-youth-climate-ruling-could-set-precedent-for-future-climate-litigation> [<https://perma.cc/6Z55-6FX8>] (reporting on state court decision providing for a fundamental right to safe and stable climate system); Michael Wines, *Ohio Voters Reject Constitutional Change Intended to Thwart Abortion Amendment*, N.Y. TIMES (Aug. 8, 2023), <https://www.nytimes.com/2023/08/08/us/ohio-election-issue-1-results.html> [<https://perma.cc/58EF-YLTD>]; Nicholas Fandos, *Top Court Clears Path for Democrats to Redraw House Map in New York*, N.Y. TIMES (Dec. 12, 2023), <https://www.nytimes.com/2023/12/12/nyregion/new-york-redistricting-democrats.html> [<https://perma.cc/A7G9-VMFA>].

¹⁵ See MICHAEL MILOV-CORDOBA, DOUGLAS KEITH & ALICIA BANNON, *LEGISLATIVE ASSAULTS ON STATE COURTS IN 2023* (2024), <https://www.brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-2023> [<https://perma.cc/GG7P-HV5F>].

¹⁶ See Williams, *supra* note 6, at 971–74.

been deferred for decades or indefinitely.¹⁷ Many litigants still do not raise state constitutional claims or fail to do so properly,¹⁸ while judges often shy away from issuing independent state constitutional decisions when a dispositive federal outcome appears as low-hanging fruit.¹⁹ And lockstepping approaches that tie state constitutional interpretation to the U.S. Constitution remain the rule, rather than the exception.²⁰

In evaluating the promise of state constitutions, the persistent obstacles to state constitutionalism were one of the things that most interested us at the symposium and in the scholarship coming out of it. If it is clear to most that state courts can and should be developing independent state constitutional law, why is it that hundreds of state constitutional provisions have never been interpreted by courts?²¹ Under what conditions should state courts be “step[ping] into the breach” and how should state judges do this?²² How durable can we expect these rulings to be in the rough and tumble of judicial elections? And why do lawyers, judges, and law schools continue to relegate state constitutional law to second-class status?

With these questions in mind, we organized a series of panels and related scholarship that would assess with clear eyes both the promise and the limits of state constitutionalism during this precarious moment in our democracy.²³

We began day one with a panel on judicial federalism. We heard from Robert Williams, who gave an overview of the New Judicial

¹⁷ See, e.g., Michael Milov-Cordoba, *School Funding Case Shows Challenges of Upholding Certain Rights in Court*, STATE CT. REP. (June 13, 2023), <https://statecourtreport.org/our-work/analysis-opinion/school-funding-case-shows-challenges-upholding-certain-rights-court> [<https://perma.cc/8HWZ-R2QV>]; Erin Geiger Smith, *North Carolina High Court Set to Backtrack on School Funding*, STATE CT. REP. (Feb. 21, 2024), <https://statecourtreport.org/our-work/analysis-opinion/north-carolina-high-court-set-backtrack-school-funding> [<https://perma.cc/3JAF-F474>].

¹⁸ See Williams, *supra* note 6, at 971.

¹⁹ James A. Gardner, *Justice Brennan and the Foundations of Human Rights Federalism*, 77 OHIO ST. L.J. 355, 364 (2016) (“State courts may well have issued 350 rights-expanding decisions during the decade following [Justice Brennan’s] article’s appearance, but they also issued thousands of decisions in which they refused to construe state constitutions to provide protections for individual rights that exceeded federal minima.”).

²⁰ See Robert F. Williams, *Lockstepping State Constitutional Rights with Federal Constitutional Law*, in THE LAW OF AMERICAN STATE CONSTITUTIONS, 193, 194 (2d ed. 2023) (noting that lockstepping occurs in “the clear majority of cases”).

²¹ Brennan, *supra* note 1, at 502 (discussing the historical reluctance for state courts to engage in independent constitutional law development and the drawbacks of having constitutional provisions remain judicially uninterpreted).

²² *Id.* at 503.

²³ For video recordings of the symposium panels, see Symposium, *The Promise and Limits of State Constitutions*, STATE CT. REP. (2024), <https://statecourtreport.org/symposium-promise-and-limits-state-constitutions> [<https://perma.cc/3K5R-B7V2>].

Federalism and what he sees as different about it today.²⁴ Justice Goodwin H. Liu from the California Supreme Court argued that state constitutionalism is valuable not because of the results it achieves, but because it promotes structural pluralism by allowing for a diverse public to channel its disagreement through dispersed constitutional decision-making, while providing the benefit of double protection should federal and state courts agree.²⁵ Julie Murray from the ACLU emphasized the challenging practical and economic reality of litigating state constitutional cases, noting that most states have neither an analogue to 42 U.S.C. § 1983 nor fee-shifting statutes to incentivize litigation and that many state court systems function as black boxes on procedural—and sometimes even substantive—matters.²⁶ (This would be a recurring theme voiced by every litigator-panelist.) Considering other barriers to developing state constitutional law, New York Court of Appeals Judge Caitlin Halligan pointed to challenges in accessing historical materials—and recent progress made by New York on this front.²⁷ Jerry Dickinson emphasized state courts as “laboratories” of democracy with policymaking and political roles akin to state legislatures—a theme he explores later in this collection.²⁸ He also reminded the audience that judicial federalism is a dialogue that can run both ways: We are accustomed to the Supreme Court taking the lead, but sometimes state courts chart a course that the Supreme Court ends up following.²⁹

²⁴ *Id.*

²⁵ See also Goodwin Liu, *State Constitutions and the Protection of Individual Rights: A Reappraisal*, 92 N.Y.U. L. REV. 1307, 1320, 1336 (2017).

²⁶ See Gary S. Gildin, *A Primer on Advocating Independent State Constitutional Remedies*, STATE CT. REP. (Feb. 27, 2024), <https://statecourtreport.org/our-work/analysis-opinion/primer-advocating-independent-state-constitutional-remedies> [https://perma.cc/4ZLS-TR6S]; Gary S. Gildin, *Redressing Deprivations of Rights Secured by State Constitutions Outside the Shadow of the Supreme Court's Constitutional Remedies Jurisprudence*, 115 PENN ST. L. REV. 877, 878 n.4, 885 (2011); See e.g., Oded Oren, *Lack of Transparency in New York Courts Undermines Democracy*, STATE CT. REP. (Nov. 28, 2023), <https://statecourtreport.org/our-work/analysis-opinion/lack-transparency-new-york-courts-undermines-democracy> [https://perma.cc/S9W9-8LL7] (noting that 94–99.5% of New York criminal court decisions are hidden); Justin R. Long, *State Courts Have Their Own Shadow Dockets*, STATE CT. REP. (Oct. 19, 2023), <https://statecourtreport.org/our-work/analysis-opinion/state-courts-have-their-own-shadow-dockets> [https://perma.cc/H7ZY-D9XF].

²⁷ See *New York State Constitutional Conventions and Constitutional History*, N.Y. STATE LIBRARY, <https://www.nysl.nysed.gov/scandocs/nyconstitution.htm> [https://perma.cc/4MKN-RFD7] (providing a comprehensive digital archive of New York's constitutional convention documents to reflect advancements in accessibility and research).

²⁸ Gerald S. Dickinson, *Judicial Laboratories*, N.Y.U. L. REV. ONLINE (forthcoming Dec. 2024); see also Jerry Dickinson, *The U.S. Supreme Court's History of Adopting State Supreme Court Guidance*, STATE CT. REP. (Feb. 12, 2024), <https://statecourtreport.org/our-work/analysis-opinion/us-supreme-courts-history-adopting-state-supreme-court-guidance> [https://perma.cc/H87K-H9AH].

²⁹ See *supra* note 23.

The second panel focused on state constitutional interpretation. State supreme court justices from Arizona, Indiana, and North Carolina discussed their approaches to interpreting their own state's constitution. Remarkably, while the justices had very different backgrounds and philosophies and expressed different views on the proper weight judges should give to text, constitutional structure, and history, all three justices were unanimous in their disapproval of reflexively interpreting state constitutions in lockstep with the U.S. Constitution. Arizona Justice Clint Bolick voiced opposition to lockstepping for many reasons, but notable among them was his view that doing so amounts to a violation of state supreme court justices' oath of office, which requires them to uphold their state constitution.³⁰ For Indiana Chief Justice Loretta Rush, anti-lockstepping promotes vertical and horizontal federalism that preserves liberty by preventing the concentration of power in any one entity—chief among them, the U.S. Supreme Court.³¹ North Carolina Justice Anita Earls joined these critiques, but also issued a cautionary note about rogue state constitutionalism. She discussed a decision by her court finding a state constitutional provision to be *less* protective than the federal analogue, undermining a fundamental assumption of judicial federalism: that the federal constitution is a floor or safe harbor.³² Justice Earls also cited other decisions in which her court has imported criminal law's "beyond a reasonable doubt" standard into constitutional interpretation—a jurisprudential maneuver that the other justices also found perplexing and problematic.³³

Day one concluded with a topic that is front of mind for both advocates and scholars: democracy. Miriam Seifter laid out state constitutions' potential for promoting democratic values, from free and equal elections clauses to constitutionally authorized citizen initiatives.³⁴ In her contribution to the symposium, she explores what the use of state legislative vetoes can teach us about separation of powers under state constitutions—a key emerging theme in active state constitutional litigation over democratic systems.³⁵ Samuel Spital, the litigation

³⁰ See also Clint Bolick, *Principles of State Constitutional Interpretation*, 53 ARIZ. ST. L.J. 771, 777 (2021).

³¹ See also Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitutions as Guardians of Civil Liberties*, 82 ALA. L. REV. 1353, 1358 (2019).

³² See *Holmes v. Moore*, 886 S.E.2d 120, 125 (N.C. 2023).

³³ See, e.g., *id.* at 129; *Harper v. Hall*, 886 S.E.2d 393, 399 (N.C. 2023).

³⁴ See also Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 859 (2021).

³⁵ Miriam Seifter, *State Legislative Vetoes and State Constitutionalism*, 99 N.Y.U. L. REV. 2017 (2024); see also Robert F. Williams, *From Rights Arguments to Structure Arguments: The Next Stage of the New Judicial Federalism*, 2023 WIS. L. REV. 1615, 1616 (2023).

director of the NAACP Legal Defense Fund, reminded us that there is still much to mine in state constitutions that can be useful to upholding the democratic process, citing a recent state constitutional litigation victory that preserved Black voting power over judges in Hinds County, Mississippi.³⁶ Wildred Codrington III and the Brennan Center's Kareem Crayton tempered some of this optimism. Crayton weighed in on the mixed record of state constitutional partisan gerrymandering cases. He noted an asymmetry where some Democratic or liberal justices have been willing to strike down Democratic gerrymanders, while only one Republican state supreme court justice in the country has voted to strike down a Republican partisan gerrymander—Chief Justice Maureen O'Connor, sitting in attendance. Chief Justice O'Connor was rewarded for her courage with threatened impeachment and stonewalling by the legislature.³⁷ For his part, Codrington emphasized the importance of politics—not litigation—in bringing about lasting rights protections. Carolyn Shapiro reminded us about the cracks left open by *Moore v. Harper*—and discusses how litigators and courts should approach these questions in her symposium article.³⁸

Following Helen Hershkoff's rousing remarks, day two began with a fascinating conversation between Ryan Park, the Solicitor General of North Carolina, and Michelle Kallen, the former Solicitor General of Virginia. The two discussed the role of state solicitors general in the development of state constitutional law. In describing their journey to their respective offices, they candidly acknowledged their unfamiliarity with state constitutional law prior to beginning this work. The widespread absence of state constitutional law courses would be another recurring theme over the course of the symposium. Law schools take note: This is probably the easiest thread to unwind in the Gordian knot of why state constitutional law is underdeveloped.

The next panel on access to courts and remedies also toggled between promise and limits. Marcus Gadson pointed out that state constitutions have all sorts of broadly worded rights that would seem to compel courts to vindicate these rights when state procedure would

³⁶ See also Michael Milov-Cordoba, *Mississippi Supreme Court Blocks Part of Law Changing How Jackson Judges Are Selected*, STATE CT. REP. (Sept. 26, 2023), <https://statecourtreport.org/our-work/analysis-opinion/mississippi-supreme-court-blocks-part-law-changing-how-jackson-judges-are> [https://perma.cc/DB4J-GJHH].

³⁷ See Haley BeMiller, Jessica Balmert & Laura A. Bischoff, *Ohio Republicans Discussing Impeachment of Chief Justice Maureen O'Connor After Map Ruling*, COLUMBUS DISPATCH (Mar. 18, 2022, 2:32 PM), <https://www.dispatch.com/story/news/2022/03/18/ohio-republicans-want-impeach-maureen-oconnor-over-redistricting/7088996001> [https://perma.cc/2J6P-89X5].

³⁸ Carolyn Shapiro, *State Law and Federal Elections after Moore v. Harper*, 99 N.Y.U. L. REV. 2049 (2024).

otherwise stand in the way.³⁹ But as Judith Resnik explores in her symposium piece, these grandly phrased open-access provisions and remedies clauses have, at least so far, proved to be more aspirational than actual.⁴⁰ Robert Schapiro and former New York Court of Appeals Judge Albert Rosenblatt identified some paths forward, with Schapiro identifying the unconstitutional conditions doctrine as a potentially fertile ground for affirmative state constitutional litigation,⁴¹ and Judge Rosenblatt reminding the judges in attendance that they can choose to modify tiers of scrutiny under state constitutions. Sharon Brett from the ACLU of Kansas highlighted some other possible pathways, including inalienable rights clauses, but sounded the alarm on the need for fee-shifting statutes to provide a financial incentive for the private bar to bring state constitutional litigation. As she noted, having three ACLU attorneys in Kansas is far from enough to develop Kansas's state constitutional law.

The penultimate panel was on reproductive rights. As Diana Kasdan from the Center for Reproductive Rights and Kate Shaw described, this is one of the most volatile arenas for state constitutional development. Former Florida Supreme Court Justice Barbara Pariente described the logistical, legal, and financial challenges of getting an abortion rights amendment on the ballot. Mary Ziegler urged more historians and law students to get involved in state constitutional historical work, as the demand for experts on state constitutional history is far outweighing the supply in this moment of "state constitutional incrementalism."⁴² Michele Goodwin similarly implored the students in attendance to go where they are needed: The state constitutional fight over abortion is occurring in state referenda across the country, but many states with anti-abortion laws on the books are also hostile to voting rights. We hope the law students in attendance heed such clarion calls.

The symposium closed with a panel on the most glaring omission in Justice Brennan's piece: an assessment of the politics of state constitutionalism. The Brennan Center's Douglas Keith provided a sobering account of the state of spending in judicial elections,⁴³ while

³⁹ Marcus A. Gadson, *Why Study State Constitutional Law?*, N.Y.U. L. REV. 1924 (2024); see also Marcus A. Gadson, *Theseus in the Labyrinth: How State Constitutions Can Slay the Procedural Minotaur*, 98 WASH. L. REV. 1 (2023).

⁴⁰ Judith Resnik, *The Capital of and the Investments in Courts, State and Federal*, N.Y.U. L. REV. 1958 (2024).

⁴¹ See generally Kay L. Levine, Jonathan Remy Nash & Robert A. Schapiro, *Protecting State Constitutional Rights from Unconstitutional Conditions*, 56 U.C. DAVIS L. REV. 247 (2022).

⁴² Mary Ziegler, *Reversing the Reversal of Roe: State Constitutional Incrementalism*, N.Y.U. L. REV. 2082 (2024).

⁴³ See also KEITH, *supra* note 13.

Michael Kang discussed cutting-edge research showing that this spending impacts judicial decision-making.⁴⁴ Robinson Woodward-Burns addressed the challenges of amending state constitutions today, with his symposium piece focusing on their anti-democratic potential,⁴⁵ while the two retired chief justices on the panel—Wallace Jefferson of Texas and Maureen O'Connor of Ohio—spoke in agreement about the dangers and distorting effects of partisan and politicized judicial elections.

So where does all of this leave us? For starters, it is clear that legal culture around state courts and state constitutions must change—and that we all have a role to play. There is a need for state constitutional courses in every law school, more scholarship, and greater access to historical materials. There are serious economic and practical barriers to state constitutional litigation that judges and legislators need to address. Judges asked for more amicus briefs, and for litigants to spend more time developing state constitutional claims. For their part, judges have an opportunity to show leadership in developing state constitutional law and culture.

State constitutionalism is part of the deep structure of our democratic system; it provides a second layer of rights-protection while preventing over-concentrations of judicial power, and it creates channels for participatory democracy while providing outlets to defuse the conflicts inherent in pluralism. In short, all stakeholders should view state constitutionalism as a critical component of our democracy. But if there is to be a durable consensus that constitutional judicial federalism is a normatively desirable feature of our democracy, we should reckon with its promise and limits. The essays enclosed do just that. We hope they inspire others to do the same.

⁴⁴ See also Michael S. Kang & Joanna M. Shepherd, *FREE TO JUDGE: THE POWER OF CAMPAIGN MONEY IN JUDICIAL ELECTIONS* (2023); Michael S. Kang, *Campaign Cash and Judicial Outcomes*, STATE CT. REP. (Aug. 14, 2023), <https://statecourtreport.org/our-work/analysis-opinion/campaign-cash-and-judicial-outcomes> [<https://perma.cc/4SWC-J4XP>].

⁴⁵ Robinson Woodward-Burns, *State Constitutions, Fair Districting, and Republican Party Entrenchment*, N.Y.U. L. REV. ONLINE (forthcoming Dec. 2024).